

Appeal from a decision of the Assistant Director, Minerals Management Service, affirming the assessment of interest charges for the late payment of royalties. MMS-86-0341-O&G.

Affirmed in part as modified and set aside and remanded in part.

1. Federal Oil and Gas Royalty Management Act of 1982:  
Assessments--Federal Oil and Gas Royalty Management Act of 1982:  
Royalties--Oil and Gas Leases: Royalties

Minerals Management Service is required by law to assess interest (late payment) charges on royalty payments for oil and gas leases which are not received by the date such payments are due.

2. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Evidence: Sufficiency--Federal Oil and Gas Royalty Management Act of 1982: Assessments--Federal Oil and Gas Royalty Management Act of 1982: Royalties

There is a legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents properly filed with them. This presumption is not rebutted where appellant asserts that royalty checks were timely mailed, but the checks were not cashed and there is no evidence the checks were received by Minerals Management Service.

APPEARANCES: Rocky Rasley, Vice President and General Manager, Bakersfield, California, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

## OPINION BY ADMINISTRATIVE JUDGE GRANT

Nahama & Weagant Energy Company (Nahama) has appealed from a decision of the Assistant Director, Minerals Management Service (MMS), dated March 11, 1987, affirming the May 7, 1986, assessment of interest charges totalling \$9,997.23 for the late payment of royalties due on natural gas produced from May 1982 through May 1985 from Federal onshore oil and gas Lease No. 06-004728.

This appeal concerns the payment of royalties for 37 production months, commencing with initial production on the lease in May 1982. In the spring of 1985, appellant contacted MMS to inquire as to the status of royalty checks it had mailed but which had not been cashed. As a result of this inquiry, MMS conducted an audit of appellant's lease. The audit and subsequent correspondence from appellant led MMS to the conclusion that appellant had remitted late royalty payments for the production months of May through December 1982, February, March, and May 1983, and that royalties had not been paid at all for the production months of January and April 1983, and June 1983 through May 1985. By letter dated February 6, 1986, MMS informed appellant that it owed MMS \$35,181.04 for the unpaid royalties. Appellant paid this amount to MMS on March 14, 1986.

By letter dated May 7, 1986, with Invoice No. 83649016 attached, MMS billed appellant for \$9,997.23 for interest due on the late payments. MMS noted that production royalties are payable on the last day of the month following the month in which the oil or gas is sold. MMS found that the \$35,181.04 royalty payment for the production months of January and April 1983, and June 1983 through May 1985 had been received on March 14, 1986, and that the royalty payments for the production months of May through December 1982, February, March, and May 1983 had also been late. MMS explained that, pursuant to 30 CFR 218.102, appellant was being assessed interest on the late payments from the date due until the date received. MMS assessed \$8,782.20 interest for the \$35,181.04 late royalty payment and \$1,215.03 interest for the late payment of the other royalties, for a total assessment of \$9,997.23 in late charges.

By letter dated June 5, 1986, appellant appealed the late payment charges to the Director, MMS. Appellant argued that it had made every reasonable effort to pay the royalties on a timely basis, and that its revenue disbursements department mailed the checks on a timely basis to an address supplied by MMS. In support of its argument, it attached copies of the checks that it sent to MMS. It noted that some of the checks were never cashed nor were they returned as undeliverable, and that its inquiry into the status of the checks precipitated the MMS audit of its lease. In short, appellant contended that it had complied with all Federal requirements, and that it should not be held liable for interest on the uncashed checks.

In the March 11, 1987, decision, the Assistant Director first stated that the Government's policy is to assess a late payment charge on all debts not received by the due date, and noted that both section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721 (1982), and 30 CFR 218.54 and 218.102 grant MMS the authority to

assess interest on untimely payments. The Assistant Director indicated that the purpose of these interest charges is to compensate the Government for the replacement costs of funds due but not paid on a timely basis. He further emphasized that the assessment is not a penalty, but rather the equivalent of the time value of the money, and also serves to mitigate additional expenses associated with the failure to make a timely payment.

In response to appellant's argument that it had timely mailed the payments and, therefore, had complied with all Federal royalty requirements and should not be liable for any interest, the Assistant Director determined that a party must accept the responsibility and bear the consequences of delay or nondelivery by the method chosen by that party for delivery of a document. He further recognized that the presumption of regularity works against a finding that MMS received a document and subsequently lost it through mishandling unless that presumption has been rebutted. He stated, however, that the presumption is not overcome by a statement that a missing document was mailed. Because the Assistant Director concluded that appellant had presented no grounds for rebutting the presumption of regularity and no arguments warranting waiver of established requirements, he dismissed the appeal.

On appeal to the Board, 1/ appellant concedes that not all of the 37 royalty checks were prepared in a timely manner, noting that the royalty check for the production month of May 1982 was not prepared until October 19, 1982, and that several other checks were prepared up to 2 weeks after their due dates. Nevertheless, appellant maintains that all checks were mailed to MMS within days of their preparation, and states that: "All 37 checks were mailed to Mineral [sic] Management Service, Royalty Management Program, Denver CO 80217. Each check was mailed to P.O. Box 5810 or P.O. Box 5760." Appellant states that, out of these 37 checks which it mailed on a monthly basis, only 12 were cashed. Eleven of those cashed checks were ultimately credited to appellant's account, but, appellant contends, one cashed check in the amount of \$2,848.23 was never properly credited to its account. Appellant avers that the remaining 25 checks were never cashed, and that none of the checks and associated MMS Forms-2014 was ever returned to it. Appellant asserts that: "We find it difficult to believe that the United States Postal Service would fail to deliver 25 separate articles sent by Nahama & Weagant to MMS over a three-year period."

Appellant contends that the only possible explanation for MMS' failure to cash the checks is that MMS received the checks and then misplaced them. Appellant argues that MMS did not have effective control of the royalty management program. In support of this argument, appellant states that, since several of the checks mailed during the three-year period were cashed by MMS and credited to appellant's account, if MMS had been in control of its program, it would have made inquiries when subsequent royalty checks were not received which it did not do. Appellant further states that, even with

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1/ Appellant has submitted both a letter containing its arguments and a response to MMS' answer. Both of these documents have been considered in resolving this appeal.

its help, MMS' audit initially produced an incorrect unpaid amount, and that appellant had to provide further assistance to MMS before an accurate accounting resulted. Appellant notes that one cashed check for \$2,848.23 still has not been properly credited to its account. Appellant further asserts that the presumption of regularity should not apply in the circumstances of this case since checks for several months were cashed and credited during several days in May 1983 even though they had been submitted separately over a period of months. Appellant contends that it has continued to have problems with MMS' failure to cash royalty payments even after the events at issue here.

Appellant asserts that it has presented sufficient evidence to rebut MMS' contention that the royalty payments were not received. It contends that the presumption of regularity should not apply here because MMS has failed to act in a fashion consistent with its public duties. It requests that the decision be reversed, and that MMS refund \$12,845.46 plus interest for the \$9,997.23 late payment charges paid and the \$2,848.23 MMS failed to credit properly to its account.

In response, 2/ MMS agrees that the \$2,848.23 royalty check was not credited to appellant's account and states that it will return that amount to appellant along with the appropriate amount of appellant's late payment charge. 3/ MMS disagrees with the rest of appellant's arguments. It defines the issue on appeal as "whether the presumption of regularity which supports the official acts of public officers in the discharge of their duties must fail in the face of the presumption that mail properly addressed, stamped, and deposited in an appropriate receptacle is delivered." MMS argues that this Board consistently has accorded greater weight to the presumption of regularity. MMS further contends that, although the presumption of regularity may be rebutted, the only evidence of receipt here is appellant's statement that the checks were mailed, and that this evidence is insufficient to rebut the presumption.

With respect to the checks for the months of June 1982 through November 1982 and February and March 1983 which are shown by MMS documents in the file as received either May 6 or 9, 1983, 4/ counsel for MMS initially contended in the answer that "the checks were not cashed and credited earlier" because they were not accompanied by Form MMS-2014 and, hence, MMS did not know where to credit the checks. MMS pointed out in its answer that none of the other missing checks were located. In its supplemental brief filed in response to the appellant's reply, MMS asserts that Nahama's checks were

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2/ MMS has submitted both an answer and a reply to appellant's response to its answer. Both of these documents have been considered.

3/ Although appellant seeks interest on the amount refunded by MMS, no authority exists for the payment of interest on royalty payments ultimately found to be refundable. Marathon Oil Co. (On Reconsideration), 103 IBLA 138 (1988).

4/ These dates correspond to the dates of cancellation appearing on the copies of the checks tendered by appellant, although the dates the checks were written vary from August through December 1982 and April 1983.

cashed when received but that, "because required Reports of Sales and Royalty Remittance (Form MMS-2014) did not accompany the royalty checks for May through December 1982," MMS did not know which lease account to credit with the royalty checks. MMS contends that "interest was assessed only from the date royalties were due to the date the checks were cashed, not to the date the checks were credited to Nahama's account." Accordingly, MMS contends that the decision should be affirmed.

The appeal of the late payment charges raises two issues in the context of this case. First, whether late payment charges are properly assessed where MMS has no record of receipt of royalty payments which appellant asserts were mailed and there is no evidence that checks drawn for such payments were cashed. Secondly, whether the record supports the assessment of late payment charges for the payments for the production months of June through November 1982 and for February and March 1983 for which MMS acknowledges receipt of the monthly payments but asserts the payments were received late.

[1] Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1982), specifically provides, in the case of oil and gas leases, that "where royalty payments are not received \* \* \* on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments." Departmental regulations at 30 CFR 218.54 and 218.102 implement this provision. Furthermore, the Board has held that the Government has the authority, independent of any specific statutory grant, to make a unilateral determination of interest owed to compensate for the use of funds due but not paid. Peabody Coal Co., 72 IBLA 337, 348 (1983); Atlantic Richfield Co., 21 IBLA 98, 111, 82 I.D. 316, 322 (1975); see Yates Petroleum Corp., 104 IBLA 173, 176 (1988). Appellant does not challenge MMS' authority to assess late payment charges, but, rather, it argues here that the payments were received by MMS and mishandled and, hence, there are no late payments on which interest should be charged. We are unable to accept this contention generally.

[2] There is a legal presumption, which is rebuttable, that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted to them. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Bernard S. Storper, 60 IBLA 67 (1981); H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981); Phillips Petroleum Co., 38 IBLA 344 (1978). On the other hand, there is a presumption that mail properly addressed, with adequate postage affixed, deposited in an appropriate receptacle, is duly delivered. See generally Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions come into conflict, the Board has accorded greater weight to the presumption of regularity. See David F. Owen, 31 IBLA 24 (1977). Public policy considerations dictate that the presumption of regularity be given such precedence. See Victor Hegsted, 66 IBLA 31 (1982); Bernard S. Storper, supra.

When an appellant asserts that a document or checks were sent to MMS, and MMS states that it did not receive the document or checks, the burden is on the one asserting that they were delivered to show that they were, in fact, timely received by MMS. See H.S. Rademacher, supra; Victor Hegsted, supra; Bernard S. Storper, supra. This burden is not satisfied by the mere

submission of a self-serving statement that a document was mailed. See, e.g., James Heldman, 65 IBLA 180 (1982); Bernard Storper, *supra*. Rather, MMS' denial of receipt can be rebutted only by substantial countervailing probative evidence. See James Boatman, 87 IBLA 31 (1985); Thomas Johnson, 77 IBLA 20 (1983); John Walter Starks, 55 IBLA 266 (1981). Appellant has failed to meet this burden.

The only evidence in the record concerning the mailing of the missing checks consists of appellant's statement that, although several checks were prepared up to two weeks after the due date, "all checks were mailed to MMS within days after their preparation," and copies of all the checks, both cashed and uncashed. We find that appellant's uncorroborated statement that the checks were mailed within days of their preparation does not provide the substantial probative evidence necessary to rebut the presumption of regularity with respect to those monthly payments for which MMS has no record of receipt. Accordingly, this aspect of the MMS decision is affirmed as modified to reflect the credit for the \$2,848.23 payment not previously credited and the appropriate reduction in the late payment charges thereon.

Appellant's argument that the presumption of regularity should not apply here because MMS lacked control over its royalty program and failed to act in a fashion consistent with its duties is generally unpersuasive. However, the issue is different with respect to those payments for the months of June 1982 through November 1982 and for February and March 1983 which MMS acknowledges receiving. The record is unclear as to when these checks were received. Documents in the file including a November 19, 1986, memorandum from the Regional Manager, Lakewood Regional Compliance Office, MMS, indicate those payments were all received on either May 6 or 9, 1983. <sup>5/</sup> As noted above, this corresponds to the date those checks were cashed. The representation that the checks were cashed upon receipt and that interest was only charged from the due date to the date of receipt is apparently inconsistent with the cashing of eight of these checks over a 3-day period. Hence, we find that the presumption of regularity will not sustain the late payment charges in connection with these payments. <sup>6/</sup>

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<sup>5/</sup> The only evidence of date of receipt in the record before the Board, other than appellant's assertion the checks were mailed within days of their date of preparation, is secondary evidence such as the memorandum cited or a computer printout of all payments on the lease. There is no copy of Form MMS-2014 or any contemporaneous document showing date of receipt.

<sup>6/</sup> We note that the regulations require royalty payments to be accompanied by a Report of Sales and Royalty Remittance (Form MMS-2014). 30 CFR 210.52, 218.51(f). This form allows MMS to process the payment, crediting the proper account. Further, the regulations provide that late payment charges may be assessed where there is a "failure to make timely or proper payments." 30 CFR 218.102(a) (emphasis added). Thus, defects in the payment submitted may lead to assessment of late payment charges. However, while the failure to provide the information required initially may have caused a delay in processing these payments as MMS asserted in its initial brief, this is not supportive of the assertion in the supplemental brief that the checks were cashed upon receipt.

Indeed, where documents were received as they clearly were in this case, the presumption of regularity is not generally an issue. The question is whether the record supports the MMS finding that the checks were received in May 1983. We are unable to affirm this finding based on the record before us. In the absence of evidence that these payments were received late and of the basis for calculating the late payment charges thereon, we are unable to affirm this aspect of the decision. Accordingly, as to the assessment of late charges for those monthly payments in the total amount of \$ 1,155.28 the decision is set aside and the case is remanded.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part as modified and set aside and remanded in part.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge

